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HOUSE BILL 117

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING PENALTIES FOR FELONY DWI OFFENDERS; MANDATING TREATMENT FOR PERSONS CONVICTED A SECOND OR THIRD TIME FOR DWI; REQUIRING THAT THE CORRECTIONS DEPARTMENT PROVIDE SUBSTANCE ABUSE COUNSELING AND TREATMENT TO FELONY DWI OFFENDERS; AMENDING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC SENTENCE. --

A. ~~Any~~ A person convicted of a noncapital felony in this state whether within the Criminal Code or the

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1 Controlled Substances Act or not who has incurred one prior  
2 felony conviction that was part of a separate transaction or  
3 occurrence or conditional discharge under Section 31-20-13 NMSA  
4 1978 is a habitual offender and his basic sentence shall be  
5 increased by one year. The sentence imposed pursuant to this  
6 subsection shall not be suspended or deferred, unless the court  
7 makes a specific finding that the prior felony conviction and  
8 the instant felony conviction are both for nonviolent felony  
9 offenses and that justice will not be served by imposing a  
10 mandatory sentence of imprisonment and that there are  
11 substantial and compelling reasons, stated on the record, for  
12 departing from the sentence imposed pursuant to this  
13 subsection.

14 B. ~~Any~~ A person convicted of a noncapital felony  
15 in this state whether within the Criminal Code or the  
16 Controlled Substances Act or not who has incurred two prior  
17 felony convictions that were parts of separate transactions or  
18 occurrences or conditional discharge under Section 31-20-13  
19 NMSA 1978 is a habitual offender and his basic sentence shall  
20 be increased by four years ~~and~~. The sentence imposed by this  
21 subsection shall not be suspended or deferred.

22 C. ~~Any~~ A person convicted of a noncapital felony  
23 in this state whether within the Criminal Code or the  
24 Controlled Substances Act or not who has incurred three or more  
25 prior felony convictions that were parts of separate

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1 transactions or occurrences or conditional discharge under  
2 Section 31-20-13 NMSA 1978 is a habitual offender and his basic  
3 sentence shall be increased by eight years [~~and~~]. The sentence  
4 imposed by this subsection shall not be suspended or deferred.

5 D. As used in this section, "prior felony  
6 conviction" means:

7 (1) a conviction, when less than ten years  
8 have passed prior to the instant felony conviction since the  
9 person completed serving his sentence or period of probation or  
10 parole for the prior felony, whichever is later, for a prior  
11 felony committed within New Mexico whether within the Criminal  
12 Code or not, but not including a conviction for a felony  
13 pursuant to the provisions of Section 66-8-102 NMSA 1978; or

14 (2) [~~any~~] a prior felony, when less than ten  
15 years have passed prior to the instant felony conviction since  
16 the person completed serving his sentence or period of  
17 probation or parole for the prior felony, whichever is later,  
18 for which the person was convicted other than an offense  
19 triable by court martial if:

20 (a) the conviction was rendered by a  
21 court of another state, the United States, a territory of the  
22 United States or the commonwealth of Puerto Rico;

23 (b) the offense was punishable, at the  
24 time of conviction, by death or a maximum term of imprisonment  
25 of more than one year; or

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1 (c) the offense would have been  
2 classified as a felony in this state at the time of conviction.

3 E. As used in this section, "nonviolent felony  
4 offense" means application of force, threatened use of force or  
5 a deadly weapon was not used by the offender in the commission  
6 of the offense."

7 Section 2. Section 66-8-102 NMSA 1978 (being Laws 1953,  
8 Chapter 139, Section 54, as amended) is amended to read:

9 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING  
10 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE  
11 OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

12 A. It is unlawful for a person who is under the  
13 influence of intoxicating liquor to drive a vehicle within this  
14 state.

15 B. It is unlawful for a person who is under the  
16 influence of any drug to a degree that renders him incapable of  
17 safely driving a vehicle to drive a vehicle within this state.

18 C. It is unlawful for a person who has an alcohol  
19 concentration of eight one hundredths or more in his blood or  
20 breath to drive a vehicle within this state.

21 D. Aggravated driving while under the influence of  
22 intoxicating liquor or drugs consists of a person who:

23 (1) has an alcohol concentration of sixteen  
24 one hundredths or more in his blood or breath while driving a  
25 vehicle within this state;

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1 (2) has caused bodily injury to a human being  
2 as a result of the unlawful operation of a motor vehicle while  
3 driving under the influence of intoxicating liquor or drugs; or

4 (3) refused to submit to chemical testing, as  
5 provided for in the Implied Consent Act, and in the judgment of  
6 the court, based upon evidence of intoxication presented to the  
7 court, was under the influence of intoxicating liquor or drugs.

8 E. ~~Every~~ A person under first conviction pursuant  
9 to this section shall be punished, notwithstanding the  
10 provisions of Section 31-18-13 NMSA 1978, by imprisonment for  
11 not more than ninety days or by a fine of not more than five  
12 hundred dollars (\$500), or both; provided that if the sentence  
13 is suspended in whole or in part or deferred, the period of  
14 probation may extend beyond ninety days but shall not exceed  
15 one year. Upon a first conviction pursuant to this section, an  
16 offender may be sentenced to not less than forty-eight hours of  
17 community service or a fine of three hundred dollars (\$300).

18 The offender shall be ordered by the court to participate in  
19 and complete a screening program described in Subsection ~~H~~ K  
20 of this section and to attend a driver rehabilitation program  
21 for alcohol or drugs, also known as a "DWI school", approved by  
22 the bureau and also may be required to participate in other  
23 rehabilitative services as the court shall determine to be  
24 necessary. In addition to those penalties, when an offender  
25 commits aggravated driving while under the influence of

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1 intoxicating liquor or drugs, the offender shall be sentenced  
2 to not less than forty-eight consecutive hours in jail. If an  
3 offender fails to complete, within a time specified by the  
4 court, any community service, screening program, treatment  
5 program or DWI school ordered by the court, the offender shall  
6 be sentenced to not less than an additional forty-eight  
7 consecutive hours in jail. Any jail sentence imposed pursuant  
8 to this subsection for failure to complete, within a time  
9 specified by the court, any community service, screening  
10 program, treatment program or DWI school ordered by the court  
11 or for aggravated driving while under the influence of  
12 intoxicating liquor or drugs shall not be suspended, deferred  
13 or taken under advisement. On a first conviction pursuant to  
14 this section, any time spent in jail for the offense prior to  
15 the conviction for that offense shall be credited to any term  
16 of imprisonment fixed by the court. A deferred sentence  
17 pursuant to this subsection shall be considered a first  
18 conviction for the purpose of determining subsequent  
19 convictions.

20 F. A second or third conviction pursuant to this  
21 section shall be punished, notwithstanding the provisions of  
22 Section 31-18-13 NMSA 1978, by imprisonment for not more than  
23 three hundred sixty-four days or by a fine of not more than one  
24 thousand dollars (\$1,000), or both; provided that if the  
25 sentence is suspended in whole or in part, the period of

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1 probation may extend beyond one year but shall not exceed five  
2 years. Notwithstanding any provision of law to the contrary  
3 for suspension or deferment of execution of a sentence:

4 (1) upon a second conviction, [~~each~~] an  
5 offender shall be sentenced to a jail term of not less than  
6 seventy-two consecutive hours, forty-eight hours of community  
7 service and a fine of five hundred dollars (\$500). In addition  
8 to those penalties, when an offender commits aggravated driving  
9 while under the influence of intoxicating liquor or drugs, the  
10 offender shall be sentenced to a jail term of not less than  
11 ninety-six consecutive hours. If an offender fails to  
12 complete, within a time specified by the court, [~~any~~] a  
13 community service [~~screening program~~] or treatment program  
14 ordered by the court, the offender shall be sentenced to not  
15 less than an additional seven consecutive days in jail. A  
16 penalty imposed pursuant to this paragraph shall not be  
17 suspended or deferred or taken under advisement; and

18 (2) upon a third conviction, an offender shall  
19 be sentenced to a jail term of not less than thirty consecutive  
20 days and a fine of seven hundred fifty dollars (\$750). In  
21 addition to those penalties, when an offender commits  
22 aggravated driving while under the influence of intoxicating  
23 liquor or drugs, the offender shall be sentenced to a jail term  
24 of not less than sixty consecutive days. If an offender fails  
25 to complete, within a time specified by the court, [~~any~~]

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1 ~~screening program or~~ a treatment program ordered by the court,  
2 the offender shall be sentenced to not less than an additional  
3 sixty consecutive days in jail. A penalty imposed pursuant to  
4 this paragraph shall not be suspended or deferred or taken  
5 under advisement.

6 G. Upon a fourth ~~or subsequent~~ conviction  
7 pursuant to this section, an offender is guilty of a fourth  
8 degree felony ~~as provided in~~ and notwithstanding the  
9 provisions of Section 31-18-15 NMSA 1978, ~~and~~ shall be  
10 sentenced to a ~~[jail term of not less than six months]~~ term of  
11 imprisonment of eighteen months, six months of which shall not  
12 be suspended or deferred or taken under advisement.

13 H. Upon a fifth conviction pursuant to this  
14 section, an offender is guilty of a fourth degree felony and,  
15 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
16 shall be sentenced to a term of imprisonment of two years, one  
17 year of which shall not be suspended, deferred or taken under  
18 advisement.

19 I. Upon a sixth conviction pursuant to this  
20 section, an offender is guilty of a fourth degree felony and,  
21 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
22 shall be sentenced to a term of imprisonment of thirty months,  
23 eighteen months of which shall not be suspended, deferred or  
24 taken under advisement.

25 J. Upon a seventh or subsequent conviction pursuant

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1 to this section, an offender is guilty of a third degree felony  
2 and, notwithstanding the provisions of Section 31-18-15 NMSA  
3 1978, shall be sentenced to a term of imprisonment of three  
4 years, two years of which shall not be suspended, deferred or  
5 taken under advisement.

6 ~~[H-]~~ K. Upon ~~[any]~~ a first conviction pursuant to  
7 this section, an offender shall be required to participate in  
8 and complete, within a time specified by the court, an alcohol  
9 or drug abuse screening program and, if necessary, a treatment  
10 program approved by the court. The requirement imposed  
11 pursuant to this subsection shall not be suspended, deferred or  
12 taken under advisement.

13 L. Upon a second or third conviction pursuant to  
14 this section, an offender shall be required to participate in  
15 and complete, within a time specified by the court, not less  
16 than a thirty-day inpatient substance abuse treatment program  
17 approved by the court or not less than a ninety-day outpatient  
18 treatment program approved by the court. The requirement  
19 imposed pursuant to this subsection shall not be suspended,  
20 deferred or taken under advisement.

21 M. Upon a felony conviction pursuant to this  
22 section, the corrections department shall provide substance  
23 abuse counseling and treatment to the offender.

24 ~~[I-]~~ N. Upon a first conviction for aggravated  
25 driving while under the influence of intoxicating liquor or

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1 drugs pursuant to the provisions of Subsection D of this  
2 section, as a condition of probation, an offender shall be  
3 required to have an ignition interlock device installed and  
4 operating for a period of one year on all motor vehicles driven  
5 by the offender, pursuant to rules adopted by the bureau.

6 Unless determined by the sentencing court to be indigent, the  
7 offender shall pay all costs associated with having an ignition  
8 interlock device installed on the appropriate motor vehicles.

9 If an offender drives a motor vehicle that does not have an  
10 ignition interlock device installed on the motor vehicle, the  
11 offender may be in violation of the terms and conditions of his  
12 probation.

13 ~~[J-]~~ 0. Upon a first conviction for driving while  
14 under the influence of intoxicating liquor or drugs pursuant to  
15 the provisions of Subsection A, B or C of this section, as a  
16 condition of probation, an offender may be required to have an  
17 ignition interlock device installed and operating for a period  
18 of one year on all motor vehicles driven by the offender,  
19 pursuant to rules adopted by the bureau. Unless determined by  
20 the sentencing court to be indigent, the offender shall pay all  
21 costs associated with having an ignition interlock device  
22 installed on the appropriate motor vehicles. If an offender  
23 drives a motor vehicle that does not have an ignition interlock  
24 device installed on the motor vehicle, the offender may be in  
25 violation of the terms and conditions of his probation.

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1           ~~[K-]~~ P. Upon any subsequent conviction pursuant to  
2 this section, as a condition of probation, a subsequent  
3 offender shall be required to have an ignition interlock device  
4 installed and operating for a period of at least one year on  
5 all motor vehicles driven by the subsequent offender, pursuant  
6 to rules adopted by the bureau. Unless determined by the  
7 sentencing court to be indigent, the subsequent offender shall  
8 pay all costs associated with having an ignition interlock  
9 device installed on the appropriate motor vehicles. If a  
10 subsequent offender drives a motor vehicle that does not have  
11 an ignition interlock device installed on the motor vehicle,  
12 the subsequent offender may be in violation of the terms and  
13 conditions of his probation.

14           ~~[L-]~~ Q. In the case of a first, second or third  
15 offense under this section, the magistrate court has concurrent  
16 jurisdiction with district courts to try the offender.

17           ~~[M-]~~ R. A conviction pursuant to a municipal or  
18 county ordinance in New Mexico or a law of any other  
19 jurisdiction, territory or possession of the United States that  
20 is equivalent to New Mexico law for driving while under the  
21 influence of intoxicating liquor or drugs, and that prescribes  
22 penalties for driving while under the influence of intoxicating  
23 liquor or drugs, shall be deemed to be a conviction pursuant to  
24 this section for purposes of determining whether a conviction  
25 is a second or subsequent conviction.

